

Exhibit 5

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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
11/28/2017
Clerk of the Court
BY: EDNALEEN ALEGRE
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

MILLENNIUM TOWER ASSOCIATION, a
California nonprofit mutual benefit
corporation,

Plaintiff,

v.

MISSION STREET DEVELOPMENT, LLC,
a Delaware Limited Liability Company; et al.,

Defendants.

AND ALL RELATED CROSS-ACTIONS.

Case No. CGC-17-557830
[Assigned for All Purposes to the Hon. Curtis
E.A. Karnow-Dept. 304]

**GLACIER NORTHWEST, INC.'S
MOTION TO QUASH WEBCOR
CONSTRUCTION, INC.'S SUMMONS
AND CROSS-COMPLAINT**

Action Filed: March 29, 2017
Trial Date: None set.

Date: December 20, 2017
Time: 2:00 p.m.

Place: Dept. 304

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on December 20, 2017, or as soon thereafter as the motion can be heard, Glacier Northwest, Inc. (hereinafter "Glacier") will move the Court for an order quashing the service on Glacier of the summons and cross-complaint of Webcor Construction LP, dba Webcor Builders, survivor to a merger with Webcor Construction, Inc. (hereinafter "Webcor").


Glacier makes this special appearance on the grounds that the state of California does not have jurisdiction over Glacier pursuant to California *Code of Civil Procedure* (hereinafter "CCP") §418.10. Glacier is a Washington corporation which does not do

1 business in California.

2 This motion is based on the attached memorandum of points and authorities, the
3 affidavit of Douglas Anderson, the declaration of J. Michael Grimm, the pleadings and
4 papers on file in this action, and on such other oral or documentary evidence as may be
5 presented at the hearing of this motion.

6
7 Dated: November 22, 2017

MONTELEONE & McCRORY LLP

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9 By 
10 William J. Ingalsbe
11 Diana M. Dron
12 J. Michael Grimm
13 Attorneys for Cross-Defendant
14 Glacier Northwest, Inc.
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MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

Glacier is a Washington corporation that does not do business in the state of California and does not have the requisite minimum contacts giving rise to general or specific jurisdictional grounds upon which personal jurisdiction may be established. (Anderson Aff. at ¶4). Plaintiff is a homeowner's association which brought suit against multiple parties for the alleged defective design and construction of a residential high-rise in San Francisco, California. (Grimm Decl. at ¶2). Webcor is one of the defendants named in the complaint. (Grimm Decl. at ¶2). In its cross-complaint, Webcor named Glacier as a cross-defendant, alleging causes of action of equitable indemnity, contribution and declaratory relief against Glacier. (Grimm Decl. at ¶3). Glacier is a ready-mixed concrete supplier incorporated in Washington, with its principal place of business in Seattle, Washington and does not do any business in the state of California. (Anderson Aff. at ¶3 and ¶4).

II. LEGAL ARGUMENT

A. Glacier Does Not Have a Substantial Connection with California

A court must have personal jurisdiction over the parties to a civil action. In the absence of personal jurisdiction over a defendant, the court has no authority to render a valid judgment against that party nor to act in any other respect. See *e.g.*, *Schwenke v. J&P Scott, Inc.* (1988) 205 Cal.App.3d 71. Facts of this case show that California courts lack jurisdiction over Glacier, so the service of the summons and cross-complaint must be quashed.

The United States Supreme Court has long held that the due process clause in the 14th amendment of the United States Constitution limits the ability of courts in a state to exercise jurisdiction over out-of-state defendants. See *e.g.*, *International Shoe v. Washington* (1945) 326 U.S. 310. It is well settled that unless a defendant consents to litigation in a state, a court can exercise personal jurisdiction only if the defendant has

1 “minimum contacts” with that state. *Id.* Through numerous cases, the United States
2 Supreme Court has clarified the test for “minimum contacts” to two inquiries: general
3 jurisdiction and specific jurisdiction. If neither exists, due process prevents a court from
4 forcing the defendant to appear.

5 General jurisdiction over a foreign corporation may exist when the corporation’s
6 affiliations with the State are so “continuous and systematic” as to render the corporation
7 essentially at home in the forum state. *Id.* at 317. Glacier does not do any business in the
8 state of California, so any allegation implying Glacier’s contacts with California are so
9 continuous and systematic cannot be supported.

10 In addition to general jurisdiction, specific jurisdiction also does not exist. Specific
11 jurisdiction analyzes whether there is a “substantial connection” between a defendant and
12 the forum state. Not only is Glacier an out of state corporation that does not do business in
13 the state of California, the cross-complaint does not even make an allegation that would
14 avail Glacier to jurisdiction in California. (Anderson Aff. at ¶4; Grimm Decl. at ¶3). The
15 causes of action against Glacier are for equitable indemnity, contribution and declaratory
16 relief, or potential damages. Minimum contacts in the form of potential damages is not a
17 “substantial connection” which would subject a defendant to personal jurisdiction.

18 The Supreme Court has said “[t]he inquiry whether a forum State may assert specific
19 jurisdiction over a nonresident defendant ‘focuses on ‘the relationship among the
20 defendant, the forum, and the litigation.’ ” *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770,
21 775, 104 S.Ct. 1473, 79 L.Ed.2d 790 (1984) (quoting *Shaffer v. Heitner*, 433 U.S. 186, 204,
22 97 S.Ct. 2569, 53 L.Ed.2d 683 (1977)). For a State to exercise jurisdiction consistent with
23 due process, the defendant’s suit-related conduct must create a substantial connection with
24 the forum State.” *Walden v. Fiore* (2014) 134 S.Ct. 1115, 1121. In order for this Court to
25 have personal jurisdiction over Glacier, Webcor must demonstrate a “substantial
26 connection” between Glacier and California. The relationship between an out of state
27 defendant and the forum state must arise out of the contacts created by the out of state
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1 defendant within the forum. See *Walden* at 1122. There is no evidence that Glacier has any
2 contacts with California and there is not even an allegation in Webcor’s cross-complaint of
3 any such contacts. (Grimm Decl. at ¶3). A Plaintiff [or cross-complainant] cannot be the
4 only link between the defendant and the forum. *Walden* at 1122. That is an insufficient
5 basis for jurisdiction. *Id.* at 1122-1123.

6 Moreover, the “substantial connection” cannot be the mere fact that Glacier may have
7 sold a product which was ultimately used in California.

8 “The “substantial connection” between a defendant and the
9 forum State necessary for a finding of minimum contacts
10 must derive from an action purposely directed toward the
11 forum State, and the mere placement of a product into the
12 stream of commerce is not such an act, even if done with an
13 awareness that the stream will sweep the product into the
14 forum State absent additional conduct indicating an intent
15 to serve the forum state market.” *Asahi Metal Industry Co.,*
16 *LTD v. Superior Court of California, Solano County* (1987)
17 402 U.S. 102, 103-104.

18
19 As found in *Asahi*, there must be additional activities between Glacier and the state of
20 California that would create a “substantial connection”, and jurisdiction in California. As
21 Glacier did not perform any additional activities, and none are alleged, there are no
22 minimum contacts upon which personal jurisdiction may be established.

23
24 **B. It Is Not Reasonable to Subject Glacier to California Jurisdiction**

25 Assuming *arguendo* that this Court finds that there is a substantial connection between
26 Glacier and California, it is not reasonable to force Glacier into defending a lawsuit in
27 California. In determining whether California courts have jurisdiction over Glacier, the
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1 Court must consider whether personal jurisdiction “comport[s] with fair play and
2 substantial justice.” *Burger King Corp. v. Rudzewicz* 471 U.S. 462, 476-477. This
3 reasonableness requirement of fair play and substantial justice may defeat local jurisdiction
4 even if the defendant has purposefully engaged in forum-related activities. See *Asahi* at
5 115; *Burger King* at 477-478.

6 The Court should give substantial deference to the facts of this case. Glacier was named
7 in the cross-complaint in the event that Webcor is found to have some liability in the
8 underlying action. The Plaintiff, Millennium Tower Association, has not alleged that
9 Glacier is at fault for the defective design and construction of the high-rise. (Grimm Decl.

10 at ¶2). Glacier’s principal place of business is in Seattle, Washington (Anderson Aff. at ¶3),
11 Glacier was incorporated as a Washington corporation in 1991 (Anderson Aff. at ¶2), and
12 Glacier does not do any business in the State of California (Anderson Aff. At ¶4). The
13 underlying case has a 49-page, 206-paragraph complaint for damages of at least \$200
14 million, with at least 30 parties (likely to far exceed 30 through cross-complaints). (Grimm
15 Decl. at ¶2). To force a corporation with no ties to California and potentially the slightest of
16 minimum contacts (although Glacier contends it does not have minimum contacts to
17 establish personal jurisdiction) is manifestly unreasonable, and does not comport with fair
18 play and substantial justice.

19 Glacier is a foreign corporation, which does not do any business in California.
20 California courts recognize remoteness for a tortfeasor, and the same principle should be
21 applied to Glacier, should the Court find a “substantial connection”. In *Farris v. Capt J.B.*
22 *Fronapfel Co.*, the court said that a nonresident tortfeasor may not be subject to California
23 jurisdiction if the tortious conduct is “too remote in time and causal connection” to the
24 injuries suffered in California. *Farris v. Capt J.B. Fronapfel Co.* (1986) 182 CA.3d 982,

25 990. Merely supplying a product that ended up in California bears no causal connection to
26 the design and construction defects which are causing the Millennium Towers to displace,
27 and Glacier should not be subjected to the overbearing underlying action for its role (or
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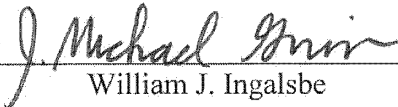
1 lack thereof) on the Project.

2 **CONCLUSION**

3 The cross complaint against Glacier should be quashed because Glacier does not have a
4 “substantial connection” with California, and subjecting Glacier to the underlying lawsuit
5 would not comport with fair play and substantial justice. For the aforementioned reasons,
6 the motion should be granted, and service quashed.

7
8 Dated: November 22, 2017

MONTELEONE & McCRORY LLP

9
10 By  _____

11 William J. Ingalsbe
12 Diana M. Dron
13 J. Michael Grimm
14 Attorneys for Cross-Defendant
15 Glacier Northwest, Inc.
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DECLARATION OF J. MICHAEL GRIMM

I, J. Michael Grimm, declare as follows:

1. I am an attorney licensed to practice law in the state of California and an associate attorney with Monteleone & McCrory, LLP. If called to testify, I could and would testify to the following facts.

2. I have read the complaint filed by Plaintiff, Millennium Towers Association. The Plaintiff is a homeowner's association which has brought suit for the alleged defective design and construction of a residential high-rise in San Francisco, California. The Complaint is 49 pages, has 206 paragraphs, and seeks recovery in an amount likely to exceed \$200 Million. Webcor is named as a defendant, but Glacier is not.

3. I have read Webcor's cross-complaint, and its sole reference to Glacier is that Glacier is a Washington Corporation that was doing business in California at all relevant times. Webcor does not allege any business activities Glacier was supposedly conducting in California. Webcor states causes of action against Glacier for equitable indemnity, contribution and declaratory relief.

I declare under the penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 22, 2017, at Los Angeles, California.


J. Michael Grimm

AFFIDAVIT

I, Douglas Anderson, a resident of the State of Washington, and Vice President of Glacier Northwest, Inc. ("Glacier"), do solemnly attest that the following is the truth, the whole truth and nothing but the truth:

1. Glacier is a Washington based corporation which specializes in supplying concrete, cement and rock products.
2. Glacier was incorporated in the State of Washington on February 19, 1991.
3. Glacier's principal place of business is in Seattle, Washington.
4. Glacier does not do any business in the State of California.

Executed on November 20, 2017 at in the City of Vancouver, State of Washington.

Douglas Anderson

WELLS
FARGO

Acknowledgment by Individual

State of Washington

County of Clark

I certify that I know or have satisfactory evidence that Douglas Anderson (name of person) is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

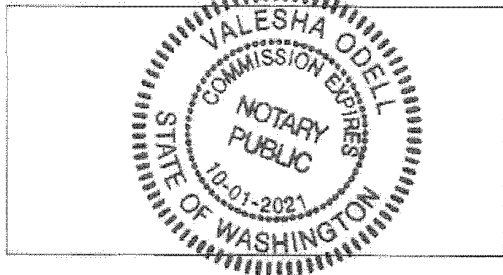
Dated 11-20-2017

Notary signature Valesha O Dell

Title Notary

My appointment expires 10-1-2021

Place Seal Here



For Bank Purposes Only

Description of Attached Document

Type or Title of Document

Affidavit

Document Date

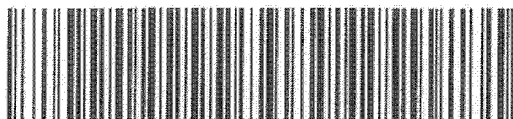
11-20-2017

Number of Pages

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Signer(s) Other Than named Above

N/A



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PROOF OF SERVICE [1013A(3) CCP]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 725 South Figueroa St., Suite 3200, Los Angeles, CA 90017.

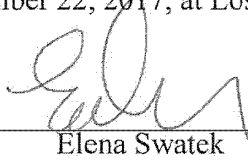
On November 22, 2017, I served the foregoing document described as:

GLACIER NORTHWEST, INC.'S MOTION TO QUASH WEBCOR CONSTRUCTION, INC'S SUMMONS AND CROSS-COMPLAINT

on the interested parties in this action by means specified below:

- ☒ **VIA ELECTRONIC SERVICE:** Complying with Code of Civil Procedure § 1010.6, my electronic business address swatek@mmlawyers.com and I caused such document to be electronically served through FileAndServeXpress to the parties on the Service List maintained on the FileAndServeXpress Website for this case. The file transmission was reported as complete and a copy of the FileAndServeXpress Receipt will be maintained with the original document in our office.
- ☐ **BY MAIL** – I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with first class postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.
- ☐ **BY PERSONAL SERVICE** — I delivered such envelope by hand to the person(s) named above.
- ☐ **BY FACSIMILE TRANSMISSION** — I transmitted said documents to the offices of the addressee(s) listed above via facsimile. The facsimile numbers are noted above.
- ☐ **BY ELECTRONIC DELIVERY** — I caused a copy of the original document to be transmitted to the person(s) named above *via* e-mail to the e-mail address(es) listed for such person(s), and with the consent and permission of the addressee(s) to accept service by such electronic means.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 22, 2017, at Los Angeles, California.



Elena Swatek